



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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COMMENT SOUGHT ON PETITIONS FOR RECONSIDERATION OF POLE ATTACHMENTS ORDER

WC Docket No. 07-245; GN Docket No. 09-51

COMMENTS DUE: [15 days after publication in the Federal Register]

REPLY COMMENTS DUE: [25 days after publication in the Federal Register]

On September 2, 2010, various electric utilities and cable providers filed petitions for reconsideration of the Commission's May 20, 2010 *Pole Attachments Order* in the dockets listed above.¹ This public notice invites comment on those petitions by the dates listed herein.

The *Pole Attachments Order* addressed the rates, terms, and conditions of pole attachments, which must be just and reasonable under section 224 of the Communications Act of 1934, as amended (Act).² The *Pole Attachments Order* clarified that communications providers are entitled to use space- and cost-saving techniques, such as attaching lines to both sides of poles and using extension arms, consistent with the individual pole owners' use of those techniques, and discussed techniques that take advantage of usable physical space on an existing pole as opposed to requiring a pole owner to replace a pole with a taller pole.³ The *Pole Attachments Order* also held that access to poles, including the preparation of poles for attachment, commonly termed "make-ready," must be timely in order to constitute just and reasonable access.⁴

Several Cable Providers filed a petition requesting clarification or reconsideration of the *Pole Attachment Order's* treatment of pole replacement versus utilization of existing infrastructure.⁵ The

¹ *Implementation of Section 224 of the Act; a National Broadband Plan for our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Order and Further Notice of Proposed Rulemaking, FCC 10-84 (rel. May 20, 2010) (*Pole Attachments Order*).

² 47 U.S.C. § 224.

³ *Id.* at paras. 14-16.

⁴ *Id.* at paras. 16-18.

⁵ Petition for Reconsideration or Clarification of the Alabama Cable Telecommunications Association, Bresnan Communications, Broadband Cable Association of Pennsylvania, Cable America Corporation, Cable Television Association Of Georgia, Florida Cable Telecommunications Association, Inc., Mediacom Communications Corporation, New England Cable and Telecommunications Association, Ohio Cable Telecommunications Association, Oregon Cable Telecommunications Association, and South Carolina Cable Television Association (Cable Providers), WC Docket No. 07-245, GN Docket No. 09-51, at 2 (filed Sept. 2, 2010) (Cable Providers Petition).

Cable Providers argue that changing out existing poles for taller poles is a routine technique that utilities have deployed and continue to deploy for their own needs and to accommodate third party attachers.⁶ The Cable Providers also argue that enabling utilities to refuse change outs would be discriminatory and would place at risk infrastructure needed to maximize broadband and deployment of other advanced communications services.⁷ The Cable Providers further argue that a pole change out requirement is well-supported as a matter of law and policy.⁸

The Coalition of Concerned Utilities (Coalition) also filed a petition for reconsideration⁹ requesting the Commission to clarify: (1) that the section 224(f) nondiscrimination requirement applies only to the extent the pole owner has allowed itself or others to use boxing, bracketing, and other attachment techniques for communications wires in the communications space; (2) that going forward, a pole owner should be free to impose new boxing and extension arm requirements regardless of what it may have allowed in the past; and (3) for poles that are jointly-owned by an ILEC and an electric utility, that each joint owner should be permitted to limit the extent to which boxing, bracketing, and other attachment techniques are permitted.¹⁰

Similarly, the Florida Investor-Owned Electric Utilities (Florida IOUs) filed a petition requesting clarification that the Commission does not intend for common electric distribution construction configurations in the electric supply space to trigger an attacher's right to use techniques such as boxing and bracketing.¹¹ Oncor Delivery Company LLC (Oncor) joins in the Florida IOUs' arguments, and further argues that the Commission lacks authority to adopt any of the rules set forth in the *Pole Attachments Order*.¹²

Pursuant to 47 C.F.R. §§ 1.429(e)-(g), oppositions to the petitions shall be filed **15 days after publication in the Federal Register**, and replies shall be filed **25 days after publication in the Federal Register**. Parties filing pleadings are encouraged to use ETFS to facilitate access to these documents. Parties filing paper copies must file an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are Monday through Friday, 8:00 a.m. to 7:00 p.m.

⁶ Cable Providers Petition at 8.

⁷ *Id.* at 12.

⁸ *Id.* at 14.

⁹ Petition for Reconsideration of the Coalition of Concerned Utilities, WC Docket No. 07-245, GN Docket No. 09-51 (filed Sept. 2, 2010).

¹⁰ *Id.* at 1.

¹¹ Petition for Reconsideration and Request for Clarification of the Florida Investor-Owned Electric Utilities, WC Docket No. 07-245, GN Docket No. 09-51 (filed Sept. 2, 2010).

¹² Petition for Reconsideration and Request for Clarification of Oncor Electric Delivery Company LLC, WC Docket No. 07-245, GN Docket No. 09-51 (filed Sept. 2, 2010).

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. Parties should also send a copy of their filings to Pamela Arluk, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A131, 445 12th Street, SW, Washington, DC 20554, or by e-mail to Pamela.Arluk@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (202) 488-5300, facsimile (202) 488-5563, via e-mail to fcc@bcpiweb.com, or via its website at <http://www.bcpiweb.com>. Documents in this proceeding are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, D.C. 20554, and will be placed on the Commission's Internet site.

Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202) 418-0531, TTY (202) 418-7365, or at fcc504@fcc.gov.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹³ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.¹⁴ Other requirements pertaining to oral and written *ex parte* presentations are set forth in section 1.1206(b) of the Commission's rules.¹⁵

For further information, contact Wesley Platt of the Competition Policy Division, Wireline Competition Bureau at (202) 418-2821.

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¹³ 47 C.F.R. §§ 1.1200, 1.1206.

¹⁴ 47 C.F.R. § 1.1206(b).

¹⁵ *Id.*